

DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

rm.pro.prob.17169

No. 240

for the sitting period 9 March – 18 March 2010

19 March 2010

LEGISLATION

With the defeat by the Senate of the Fairer Private Health Insurance Incentives Bill 2009 [No. 2] at its second reading on 9 March 2010, another double dissolution trigger was added to the previous list of 13 bills (comprising 11 CPRS bills and two other private health insurance incentives bills). The bill was negatived on an equally divided vote but a statement by the government whip the following day indicated that a pairing error had occurred. The error did not change the outcome.

The troubled Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009 was the subject of an attempt on 10 March 2010 to defer its further consideration for 5 sitting days after the tabling of the Government's response to the National Broadband Network Implementation Study (see below, under Orders for production of documents). Only Coalition senators supported the motion to suspend standing orders and the attempt therefore failed. The bill was proceeded with but was subsequently moved down the agenda, and its consideration was not completed before the end of the autumn sittings.

The controversy surrounding the Social Security and Other Legislation (Income Support for Students) Bill 2009 [No. 2] was finally resolved when the Government moved compromise amendments and requests for amendments on 17 March 2010, allowing the beneficial measures in the bill to come into effect and ameliorating to some extent the measures previously regarded as detrimental to rural and regional students in particular. The House of Representatives agreed to the amendments and requests to this bill, as well as to several others. There were no disagreements between the Houses during the fortnight over legislation.

DISALLOWANCE

Certain National Health Determinations, relating to new therapeutic groups established under the pharmaceutical benefits scheme, were disallowed on 11 March 2010. Because the disallowed items were new, no issue of revival of the previous regime arose as it had done in relation to the disallowance of the Medicare rebates for eye cataract surgery last year (see Bulletin nos. 236 and 237).

On 9 March 2010, the Government withdrew a notice of motion given in February to permit the remaking of the Aviation Transport Security Amendment Regulations 2009 (No. 1) which had been disallowed by the Senate on 10 September last year (see Bulletin no. 235). Whatever reason the Government may have had for wanting to remake the regulations, the restriction imposed by the Legislative Instruments Act on the remaking of an instrument the same in substance as one disallowed within the previous six months was about to disappear in any case.

ORDERS FOR PRODUCTION OF DOCUMENTS

There was significant action and inaction on the 'orders for production of documents' front during the fortnight. The much sought-after National Broadband Implementation Study (and Government response) was again the subject of an order for production of documents on 11 March 2010 and, in a statement to the Senate on 17 March 2010, the Minister again declined to produce it at this stage. A further order for the interim report of the study was agreed to later the same day.

In contrast, the third attempt to order the production of maps of Australian forest cover met with full compliance on 18 March 2010, the Minister tabling DVDs of the maps that met the requirement for high resolution versions of them.

Documents tabled on 11 March 2010 in response to an order agreed to on 25 February for reports on proposed sites for a Commonwealth radioactive waste dump were believed to have fully complied with the order, until the Minister, in an answer to a question without notice, revealed that an anthropological report prepared by consultants (the subject of part of the order) had subsequently been discovered in the department. The Minister (who represented the responsible minister) tabled a précis of the study, claiming that, as the full report contained material relating to sacred sites and matters of cultural sensitivity, it had been provided to the department on a confidential basis.

An order for documents relating to the supervision of the problematic home insulation program was agreed to on 17 March but the deadline set for the following day was not met.

An order for the government response to the National Human Rights Consultation report, agreed to on 17 March 2010, falls due in May.

CEREMONIAL MEETING

In line with the practice that has been followed in recent years, senators were invited into the chamber of the House of Representatives to hear an address by visiting Indonesian President, Dr Susilo Bambang Yudhoyono on 10 March 2010. This practice developed following controversy attending the visit of US President, George W. Bush, in 2003. After inquiries by the Privileges Committee and Procedure Committee, the government accepted that future addresses by foreign heads of state should be made to the House of Representatives with senators invited as guests, rather than as joint meetings of the two Houses which raised irresolvable questions of procedure and privilege.

A similar meeting is expected to occur when current US President, Barak Obama, visits Australia. The visit was postponed after the Houses rose for the Easter break but, late on the last day of sitting, a message had been reported from the House of Representatives inviting senators to attend a meeting of the House on 26 March 2010 to hear the President's address. No separate meeting of the Senate was planned although the motion moved before sittings concluded on 18 March 2010 provided the President with a discretion to set the date for a meeting of the Senate, if required, before the Senate's next scheduled meeting on 11 May 2010. Otherwise, the Senate may be recalled only at the request of a majority of senators pursuant to standing order 55. This now appears to be academic as President Obama's visit is not expected before June.

SCRUTINY OF BIOSECURITY MEASURES AND OTHER COMMITTEE MATTERS

Through estimates hearings and a references committee inquiry, the Senate has kept the pressure on the government over the issue of importation of beef from countries previously affected by BSE (Bovine Spongiform Encephalopathy or 'mad cow disease'). A private senator's bill to impose Australian standards on imported beef was introduced on 9 March 2010 and debated during the general business period on 11 March 2010 (see below under 'Deferred vote'). The issue was also discussed as a matter of public importance on 9 March in response to a government announcement the previous day that an import risk assessment would, after all, be undertaken, thereby postponing the actual importation of any beef from BSE-affected countries for some time. In the meantime, the Rural and Regional Affairs and Transport References Committee presented a further interim report and a 'First report' on the matter. A timeframe for any subsequent report has not yet been set.

In other committee matters:

- detailed terms of reference on the Green Loans program were referred to the Environment, Communications and the Arts References Committee on 10 March 2010 in advance of a ministerial statement made on the issue later the same day;
- Senator Xenophon made two unsuccessful attempts to refer to committees matters relating to the practices and status of the Church of Scientology, and vowed to continue bringing these matters to the attention of the Senate;
- legislation committees presented their reports on annual reports, with some reports taking up the suggestion made by the Finance and Public Administration Committee's report, *Transparency and accountability of Commonwealth Public Funding and expenditure*, to check if reports accurately reflected the performance indicators in the PBS and PAES and to report on the final expenditure on outputs compared with the estimates;
- a response by the Presiding Officers to certain recommendations of the Joint Standing Committee on Treaties in its 106th report was tabled and debated on 16 March 2010;
- a new select committee on reform of the Australian Federation was appointed on 17 March 2010 but the committee will not commence its operation until the Select Committee on the National Broadband Network concludes, apparently in accordance with an informal agreement about the number of select committees operating concurrently;
- the Finance and Public Administration Legislation Committee presented its report on the provisions of the Freedom of Information Amendment (Reform) Bill 2009 and related Information Commissioner Bill 2009. The majority report suggested that the new Information Commissioner examine the future inclusion of exempt agencies in the legislation while the Australian Greens' minority report earmarked the application of the laws to Parliament (currently not subject to the Act) as an area of future interest;
- a bill was referred to the Joint Standing Committee on the National Capital and External Territories by motion on 18 March 2010. Although most bills references are now recommended by the Selection of Bills Committee, that committee does not have the power to recommend the referral of bills to joint committees.

Also see below under 'Parliamentary privilege'.

JOINT SELECT COMMITTEE ON CYBER-SAFETY

It is some years since the Houses have agreed to establish a joint select committee. A proposal to establish a Joint Select Committee on Cyber-Safety, initiated in the House of Representatives, was agreed to on 11 March 2010 after the Senate amended the membership formula to ensure that it reflected the composition of the Senate more accurately. The

committee will have seven House of Representatives members and five Senate members (two government, two opposition and one minor party or independent senator). The original proposal, for three government and two opposition, minor party or independent senators, reflected the usual approach of another place where the government has a majority. The House of Representatives agreed to the Senate's modification to the resolution of appointment and members were appointed on 16 March 2010, a ballot being held between Senators Ludlam and Fielding for the place allocated to minor party and independent senators. The ballot, initially won by Senator Fielding, was held again by leave the following day after senators indicated that there had been insufficient notice of the vote and it had not been appreciated that informal pairing arrangements would not apply in the case of a secret ballot. Senator Ludlam won the second ballot, the result indicating that voting did not proceed entirely along party lines. Pursuant to early rulings of the President, ballot papers are not available for subsequent inspection but are sealed and kept in the custody of the Clerk.

DEFERRED VOTE

When the Food Importation (Bovine Meat Standards) Bill 2010 was debated during general business on 11 March 2010, the Opposition whip moved the closure on the question for the second reading and a division was called for. As it was after 4:30 p.m., the standing orders require that the vote be deferred to a time fixed by the Senate. The Senate fixed immediately after discovery of formal business on the next date of sitting as the time for the vote to be taken. When the time arrived, the question was put again in accordance with practice and the motion was agreed to (on division). This outcome had the effect of requiring the vote on the motion for the second reading of the bill to be put immediately. Because the bill was being considered under the expedited proceedings (see standing order 113), further stages of the bill were dealt with immediately after the second reading was agreed to, and debate occurred on the third reading motion. The bill was agreed to and transmitted to the House of Representatives for its concurrence.

Although the bill would not normally have been considered except during general business time (or pursuant to a suspension of standing orders), the fact that the vote was deferred to a time not designated for any specific business, together with the fact that the bill was being considered under the expedited proceedings, suggested that consideration of it should continue until concluded, with the option existing to adjourn the debate if that was the will of a majority of senators. This is possibly an unintended consequence of the mechanism for deferring votes that are called for after 4:30 p.m. on Thursdays.

PARLIAMENTARY PRIVILEGE

The Foreign Affairs, Defence and Trade References Committee presented a very strong report on 18 March 2010 on an issue of parliamentary privilege involving the possible

interference with the committee's work on its inquiry into matters relating to events on the HMAS Success. The Department of Defence had issued a series of instructions concerning the participation of Defence personnel in the committee's inquiry, which the committee found to have interfered with its ability to conduct the inquiry. Having sought advice from the Clerk, the committee took the matter up with the Minister for Defence who had already withdrawn the offending instructions. The Chief of the Defence Force apologised to the committee but the committee remained critical of the department's initial failure to understand and exercise its responsibilities and obligations to the committee. A third, replacement instruction did not entirely satisfy the committee. As a consequence, the committee has recommended that the Privileges Committee undertake an inquiry into the *Government Guidelines for witnesses appearing before parliamentary committees*, particularly those sections dealing with witnesses appearing in a private capacity. The recommendation has not yet been given effect.

The committee reasserted in its report the principle that any individual has a right to communicate with parliamentary committees without fear of interference from another.

In addition, the committee recommended that all legal officers in Defence Legal and senior officers in the Ministerial and Executive Support Branch (whence emanated the offending instructions) undertake study in the principles governing the operations of Parliament and the accountability of government agencies to Parliament. This recommendation closely follows similar resolutions of the Senate in the past applying to senior public servants and senior officers of the then government-owned Telstra. The apparent lack of knowledge amongst senior public sector officers of their accountability obligations to the Parliament has been an issue of concern to the Senate for at least the past two decades.

Shortly after the presentation of this report, the Chair of the Privileges Committee moved a motion to refer another matter to the committee, namely the provisions of the Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009, with particular reference to the provisions relating to the disclosure of taxpayer information to parliamentary committees and possible conflict with the *Parliamentary Privileges Act 1987*. The bill had been considered by the Economics References Committee and the Scrutiny of Bills Committee but the particular provisions which appear to place limits on the information tax officers can provide to parliamentary committees (and the circumstances in which it can be provided) have now been referred to the Senate's expert committee in this area.

RELATED RESOURCES

The *Dynamic Red* records proceedings in the Senate as they happen each day.

The *Senate Daily Summary* provides more detailed information on Senate proceedings, including progress of legislation, committee reports and other documents tabled and major actions by the Senate.

Like this bulletin, these documents may be reached through the Senate home page at www.aph.gov.au/senate

Inquiries: Clerk's Office
(02) 6277 3364